

CSD 1160 [05/15/03]

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UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF CALIFORNIA
 325 West "F" Street, San Diego, California 92101-6991

In Re

DAVID JEFFREY FLAKER AND ALICIA ANN FLAKER,

Debtor.

BANKRUPTCY NO. 10-02506-LT7

THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK
 AS TRUSTEE FOR THE CERTIFICATEHOLDERS CWALT, INC.,

Moving Party

RS NO.

M&B1

DAVID JEFFREY FLAKER AND ALICIA ANN FLAKER, Debtor;
 GERALD H. DAVIS, Trustee,

Respondent (s)

MOTION FOR RELIEF FROM AUTOMATIC STAY



REAL PROPERTY



PERSONAL PROPERTY

Movant in the above-captioned matter moves this Court for an Order granting relief from the automatic stay on the grounds set forth below.

1. A Petition under Chapter ☒ 7 ☐ 11 ☐ 12 ☐ 13 was filed on February 19, 2010

2. Procedural Status:

a. ☒ Name of Trustee Appointed (if any): GERALD H. DAVIS

b. ☐ Name of Attorney of Record for Trustee (if any):

c. ☐ (Optional) Prior Filing Information:

Debtor has previously filed a Bankruptcy Petition on: _____

If applicable, the prior case was dismissed on: _____

d. ☐ (If Chapter 13 case): Chapter 13 Plan was confirmed on _____ or a confirmation hearing is set for _____

Movant alleges the following in support of its Motion:

1. ☒ The following real property is the subject of this Motion:

a. Street address of the property including county and state:

933 TEMPERA COURT
 OCEANSIDE, CA 92507

b. Type of real property (e.g., single family residence, apartment building, commercial, industrial, condominium, unimproved):

SINGLE FAMILY RESIDENCE

c. Legal description of property is attached as Exhibit A.

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- d. If a chapter 11 or 13 case and if non-payment of any post-petition payment is a ground for relief, attach the accounting required by Local Bankruptcy Rule 4001-2(a)(4) as Exhibit B.
- e. *Fair market value of property as set forth in the Debtor's schedules: \$ 365,000.00
- f. *Nature of Debtor's interest in the property:
CO-OWNERS

2. ☐ The following personal property is the subject of this Motion (*describe property*):

a. Fair market value of property as set forth in the Debtor's schedules: \$ _____

b. Nature of Debtor's interest in the property: _____

3. *Fair market value of property according to Movant: \$ 365,000.00

4. *Nature of Movant's interest in the property: FIRST DEED OF TRUST

5. *Status of Movant's loan:

a. Balance owing on date of Order for Relief: \$ 549,091.75

b. Amount of monthly payment: \$ 2,138.56

c. Date of last payment: 12/17/2008

d. If real property,

i. Date of default: 7/1/2008

ii. Notice of Default recorded on: _____

iii. Notice of Sale published on: _____

iv. Foreclosure sale currently scheduled for: _____

e. If personal property,

i. Pre-petition default: \$ _____ No. of months: _____

ii. Post-petition default: \$ _____ No. of months: _____

6. (If Chapter 13 Case, state the following:)

a. Date of post-petition default: _____

b. Amount of post-petition default: \$ _____

7. Encumbrances:

a. Voluntary encumbrances on the property listed in the Schedules or otherwise known to Movant:

Lender Name	Principal Balance	(IF KNOWN) Pre-Petition Arrearages Total Amount - # of Months		Post-Petition Arrearages Total Amount - # of Months	
1st: Bank of New York	506,381.06	37,733.57	20	4,977.12	2
2nd: Real Time Res	58,000.00				
3rd:					
4th:					
Totals for all Liens:	\$ 564,381.06	\$ 37,733.57		\$ 4,977.12	

b. Involuntary encumbrances of record (e.g., tax, mechanic's, judgment and other liens, lis pendens) as listed in schedules or otherwise known to Movant:

☐ See attached page, if necessary.

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8. Relief from the automatic stay should be granted because:

- a. ☒ Movant's interest in the property described above is not adequately protected.
- b. ☒ Debtor has no equity in the ☒ real property ☐ personal property described above and such property is not necessary to an effective reorganization.
- c. ☐ The property is "single asset real estate", as defined in 11 U.S.C. § 101(51B), and 90 days (or _____ days as ordered by this court) have passed since entry of the order for relief in this case, and
- i. the Debtor/Trustee has not filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; and
- ii. the Debtor/Trustee has
- (1) ☐ not commenced monthly payments to each creditor whose claim is secured by the property (other than a claim secured by a judgment lien or by an unmatured statutory lien), or
- (2) ☐ commenced payments, but such payments are less than an amount equal to interest at a current fair market rate on the value of each creditors' interest in the property.
- d. ☐ *Other cause exists as follows (*specify*): ☐ See attached page.

When required, Movant has filed separate Declarations pursuant to Local Bankruptcy Rule 4001-2(a)(5) and (6).

Movant attaches the following:

1. ☒ Other relevant evidence:
Declaration of Betty Greene in Support of Motion for Relief from the Automatic Stay.
2. ☐ (*Optional*) Memorandum of points and authorities upon which the moving party will rely.

WHEREFORE, Movant prays that this Court issue an Order granting the following:

- ☒ Relief as requested.
- ☒ Other:
1. For an Order waiving the 14-day stay provided by Bankruptcy Rule 4001(a)(3).
2. For an Order binding and effective despite any conversion of this bankruptcy case.

Dated: May 7, 2010

/s/ Mark T. Domeyer
[Attorney for] Movant

ATTACHMENT PAGE TO MOTION FOR RELIEF FROM AUTOMATIC STAY

There is currently a second Trust Deed upon the Property in favor of REAL TIME RESOLUTION, securing a Promissory Note in an unknown original amount. The present unpaid principal balance of said Note is \$58,000.00 as listed on Schedule D-Creditors Holding Secured Claims of the Debtors' Schedules. Attached hereto as **Exhibit "E"** is a copy of Schedule D-Creditors Holding Secured Claims of the Debtors' Schedules.